

§ 2-18.1) or Count 8 (violations of 2 Okla. Stat. § 10-9.7 and Okla. Admin. Code § 35:17-5-5), and these claims are therefore entirely intact following the Court's June 22, 2009 Order. *See* DKT #1788.

As the case presently stands, the State does not dispute that no stand-alone jury issues remain as to its common law claims for injunctive relief in Counts 4, 5 and 6. Nor does the State dispute that there are no jury issues with respect to its RCRA claim in Count 3. The State does, however, dispute Defendants' contention that there are no jury issues with respect to its state statutory claims in Counts 7 and 8. Moreover, there are also jury issues with respect to the State's CERCLA natural resource damages claim in Count 2, which is a subject of the State's motion for reconsideration of the July 22, 2009 Order. *See* DKT #2393.

II. The State is entitled to a jury trial with respect to its claims for civil penalties under Counts 7 and 8

Under Counts 7 and 8, the State seeks both civil penalties and injunctive relief. Because claims for civil penalties are legal claims, the State has a constitutional right to a jury trial to determine Defendants' liability on these legal claims. Therefore, striking the State's jury demand with respect to Counts 7 and 8 would be improper.

A. Count 7

1. 27A Okla. Stat. § 2-6-105

In Count 7, the State has brought a claim for violations of 27A Okla. Stat. § 2-6-105(A). 27A Okla. Stat. § 2-6-105(A) provides:

It shall be unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state. Any such action is hereby declared to be a public nuisance.

The remedy provision accompanying 27A Okla. Stat. § 2-6-105(A), entitled "Violation of Code, order, permit or license or rule -- Penalties and remedies," is found at 27A Okla. Stat. § 2-3-504.

This section provides in pertinent part:

Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, the Oklahoma Environmental Quality Code . . . :

* * *

2. May be punished in civil proceedings in district court by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation;

* * *

4. May be subject to injunctive relief granted by a district court. A district court may grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of this Code or any rule promulgated thereunder or order, license or permit issued pursuant to this Code.

27A Okla. Stat. § 2-3-504(A).¹ In Count 7, the State explicitly seeks both of these remedies:

Pursuant to 27A Okla. Stat. § 2-3-504 . . . , the State of Oklahoma is entitled to an assessment of civil penalties against the Poultry Integrator Defendants for each respective violation together with attorneys fees and costs associated with the collection of such civil penalties, injunctive relief against the Poultry Integrator Defendants compelling compliance with 27A Okla. Stat. § 2-6-105 . . . , and all such other relief as may be provided for under the law.

DKT #1215 (Second Amended Complaint, ¶ 131).²

¹ Additionally, 27A Okla. Stat. § 2-3-504(C) provides that "[a]ny person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties."

² Defendants, in an apparent attempt to disparage the State's claim for penalties under Counts 7 and 8, postulate that such claims are an "embellishment" to the Second Amended Complaint. *See* Motion, p. 7. The State's claims for penalties are nothing of the sort. That Defendants may have overlooked them in their case preparation does not mean the State does not take these remedies seriously or intend to pursue them to the fullest extent allowable. They are far more than a mere incidental part of the State's case. Moreover, Defendants attempt to fault the State for not having quantified the amount of penalties sought. As explained below, however, Defendants in making this assertion have overlooked the fact that the assignment of the amount of civil penalties, in contrast to the determination of liability giving rise to the imposition of penalties, is determined by the Court, not the jury.

Relying upon 27A Okla. Stat. § 2-3-504(F)(2), Defendants assert that "this statute expressly assigns to the Court the authority to 'determine' the action, and not a jury." *See* Motion, p. 8. Defendants' analysis is flawed as a matter of constitutional law. Assuming, for the sake of argument only, that Defendants are correct that 27A Okla. Stat. § 2-3-504(F)(2) were, in state court, to deny the State of a jury trial on its claim for civil penalties under 27A Okla. Stat. § 2-6-105(A),³ the Seventh Amendment nonetheless requires that, in federal court, a jury trial be provided.

It is well-settled constitutional law that "the right to a jury trial in the federal courts is to be determined as a matter of federal law in diversity as well as other actions." *See Simler v. Conner*, 372 U.S. 221, 222 (1963); *Mexican Private Equity Fund v. Dougherty*, 2009 U.S. Dist. LEXIS 58688, *4-5 fn. 2 (N.D. Okla. July 9, 2009) (Frizzell, J.) (same). *Simler* involved an appeal from the Tenth Circuit Court of Appeals. The Tenth Circuit had held that in a diversity action in federal court, state law governs in determining whether an action is legal or equitable for purposes of deciding whether a claimant has a right to a jury trial, and analyzing the action under Oklahoma law concluded that a jury trial was not appropriate. *Id.* at 221. In reversing the Tenth Circuit, the *Simler* court explained:

Only through a holding that the jury trial right is to be determined according to federal law can the uniformity in its exercise which is demanded by the Seventh Amendment be achieved. In diversity cases, of course, the substantive dimension of the claim asserted finds its source in state law, but the characterization of that

³ Defendants' assumption that, in state court, 27A Okla. Stat. § 2-3-504(F)(2) precludes a jury trial is incorrect. Defendants read too much into the language "[t]he court shall have jurisdiction to determine said action" found in 27A Okla. Stat. § 2-3-504(F)(2) (as well as in 2 Okla. Stat. § 2-16(C) and 2 Okla. Stat. § 10-9.11(C)(2)). The fact is that nothing in the statute affirmatively states that the right to a jury trial is denied with respect to liability for civil penalties. The language is, at worst, ambiguous and should be read in harmony with the Oklahoma Constitution. *See* Okla. Const., art. II, § 19 ("[t]he right of trial by jury shall be and remain inviolate").

state-created claim as legal or equitable for purposes of whether a right to jury trial is indicated must be made by recourse to federal law.

Id. (citations omitted). As succinctly put by Wright and Miller:

It now also is clear that federal law determines whether there is a right to a jury trial in a case involving state law that has been brought in federal court, and that in such a circumstance, state law is wholly irrelevant. . . . Even though the underlying substantive claim derives from state law, its characterization as legal or equitable -- and therefore the question of whether it is jury triable or not -- is determined by federal law.

Wright & Miller, 9 Fed. Prac. & Proc. Civ. 3d, § 2303.

Accordingly, the answer to whether the State is entitled to a jury trial on its claim to determine Defendants' liability for civil penalties under 27A Okla. Stat. § 2-6-105(A) turns entirely on the question of whether, *as a matter of federal law*, a claim for civil penalties is "legal" or "equitable" in nature. The answer is easily arrived at because the Supreme Court has already definitively addressed this question. In *Tull v. United States*, 481 U.S. 412 (1987) -- a case involving a claim for civil penalties under the Clean Water Act -- the Supreme Court held that:

[a] civil penalty was a type of remedy at common law that could only be enforced in courts of law. Remedies intended to punish culpable individuals, as opposed to those intended to simply extract compensation or restore the status quo, were issued by courts of law, not courts of equity.

Id. at 422. Like the civil penalties under the Clean Water Act discussed in *Tull*, the civil penalties in the statutes at issue here are indisputably intended to punish. *See, e.g.*, 27A Okla. Stat. § 2-3-504(A)(2) (violators "[m]ay be punished in civil proceedings in district court by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation") (emphasis added).

Moreover, any argument by Defendants that the civil penalties at issue here are incidental or intertwined with injunctive relief cannot stand up to scrutiny. In fact, the Supreme Court

rejected such arguments in *Tull*. First, the Supreme Court held that, "a court in equity . . . may not enforce civil penalties." *Tull*, 481 U.S. at 424. This holding alone is dispositive.

And second, in any event, like the provisions of the Clean Water Act at issue in *Tull*, the provisions of 27A Okla. Stat. § 2-3-504(A) separately authorize civil penalties and injunctive relief. *See* 27A Okla. Stat. § 2-3-504(A)(2) & (A)(4). Put another way, as a factual matter, 27A Okla. Stat. § 2-3-504 plainly does not intertwine equitable relief with the imposition of civil penalties. In *Tull*, as here:

[T]he Government was free to seek an equitable remedy in addition to, or independent of, legal relief. Section 1319 [of the Clean Water Act] does not intertwine equitable relief with the imposition of civil penalties. Instead each kind of relief is separately authorized in a separate and distinct statutory provision. Subsection (b), providing injunctive relief, is independent of subsection (d), which provides only for civil penalties. In such a situation, if a "legal claim is joined with an equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim as 'incidental' to the equitable relief sought." *Curtis v. Loether*, 415 U.S., at 196, n. 11. Thus, petitioner has a constitutional right to a jury trial to determine his liability on the legal claims.

Tull, 481 U.S. at 425.

In sum, the State's claim for civil penalties for violations of 27A Okla. Stat. § 2-6-105(A) is legal in nature and the State has a constitutional right to a jury trial to determine Defendants' liability on this claim.⁴

⁴ In contrast to the right to a jury trial to determine Defendants' liability on its claim for civil penalties for violations of 27A Okla. Stat. § 2-6-105(A), leaving "the determination of the amount of civil penalties to trial judges . . . does not infringe on the right to a jury trial." *See Tull*, 481 U.S. at 426-27. Thus, unlike the liability issue which goes to the jury, *the amount* of civil penalties to be imposed on Defendants should be determined by the Court. Under the statute, in determining the amount of civil penalties, the Court should consider factors such as "the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require." *See* 27A Okla. Stat. § 2-3-504(H). Contrary to Defendants' suggestion, these factors are not

2. 2 Okla. Stat. § 2-18.1

In Count 7, the State has also brought a claim for violations of 2 Okla. Stat. § 2-18.1.

The statute in relevant part provides:

It shall be unlawful and a violation of the Oklahoma Agricultural Code for any person to cause pollution of any air, land or waters of the state by persons which are subject to the jurisdiction of the Oklahoma Department of Agriculture, Food, and Forestry pursuant to the Oklahoma Environmental Quality Act.

2 Okla. Stat. § 2-18.1(A). The remedy provision accompanying 2 Okla. Stat. § 2-18.1 provides for actions "to redress or restrain a violation of the Oklahoma Agricultural Code, any promulgated rule or any order, license, charter, registration, or permit issued pursuant to the Oklahoma Agricultural Code or to recover any administrative or civil penalty or other fine assessed pursuant to the Oklahoma Agricultural Code" *See* 2 Okla. Stat. § 2-16(B). Just as it does with its claim for violations of 27A Okla. Stat. § 2-6-105(A), the State also seeks civil penalties and injunctive relief under its claim for violations of 2 Okla. Stat. § 2-18.1:

Pursuant to . . . 2 Okla. Stat. § 2-16, the State of Oklahoma is entitled to an assessment of civil penalties against the Poultry Integrator Defendants for each respective violation together with attorneys fees and costs associated with the collection of such civil penalties, injunctive relief against the Poultry Integrator Defendants compelling compliance with . . . 2 Okla. Stat. § 2-18.1 . . . , and all such other relief as may be provided for under the law.

DKT #1215 (Second Amended Complaint, ¶ 131).^{5 & 6}

equitable in nature. *See* Motion, pp. 8-9. Rather, they substantively parallel the factors a jury is to consider in awarding punitive damages. *Compare* 27A Okla. Stat. § 2-3-504(H) *with* 23 Okla. Stat. § 9.1(A).

⁵ In a flawed effort to argue that 2 Okla. Stat. § 2-18.1 does not provide for a court award of civil penalties, Defendants conflate and confuse "administrative penalties" with "civil penalties." *See* Motion, pp. 9-10. Administrative penalties are imposed through administrative proceedings, while civil penalties are imposed through judicial proceedings. To wit, the only type of penalties provided for in administrative proceedings before the State Board of Agriculture are administrative penalties. *See* 2 Okla. Stat. § 2-18(A) ("After notice and opportunity for a hearing in accordance with the Administrative Procedures Act, if the State

For the same reasons that it is constitutionally entitled to a jury trial to determine Defendants' liability on its claim for civil penalties for violations of 27A Okla. Stat. § 2-6-105(A) under *Simler* and *Tull*, the State is constitutionally entitled to a jury trial to determine Defendants' liability on its claim for civil penalties for violations of 2 Okla. Stat. § 2-18.1.

B. Count 8 -- 2 Okla. Stat. § 10-9.7 and Okla. Admin. Code § 35:17-5-5

In Count 8, the State has brought a claim for violations of 2 Okla. Stat. § 10-9.7 and Okla. Admin. Code § 35:17-5-5. 2 Okla. Stat. § 10-9.7 requires that "[a]ll poultry feeding operations . . . utilize Best Management Practices and . . . meet the conditions and requirements established by [2 Okla. Stat. § 10-9.7(B)] and by rules promulgated by the State Board of Agriculture pursuant to the Oklahoma Registered Poultry Feeding Operations Act." 2 Okla. Stat. § 10-9.7(A). 2 Okla. Stat. § 10-9.7(B) provides, *inter alia*, that "[p]oultry waste handling, treatment, management and removal shall: (a) not create an environmental or a public health hazard, [and] (b) not result in the contamination of waters of the state" 2 Okla. Stat. § 10-9.7(B)(4)(a) & (b). Additionally, 2 Okla. Stat. § 10-9.7(C)(6)(d) provides that "runoff of waste from the [poultry waste] application site is prohibited." And Okla. Admin. Code § 35:17-5-5(a)(7)(C) provides that "[r]unoff of poultry waste from the application site is prohibited."

Board of Agriculture finds any person in violation of the Oklahoma Agricultural Code or any rule promulgated or order issued pursuant thereto, the Board shall have the authority to assess an *administrative penalty* of not less than One Hundred Dollars (\$100.00) and not more than Ten Thousand Dollars (\$10,000.00) for each violation") (emphasis added). Underscoring the difference between administrative penalties and civil penalties, the statute further provides that "[t]he assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment *by a court* of the maximum *civil* or criminal *penalties* for violations of the Oklahoma Agricultural Code and rules promulgated pursuant thereto." See 2 Okla. Stat. § 2-18(D) (emphasis added).

⁶ 2 Okla. Stat. § 2-18(E) also provides that "[a]ny person assessed . . . [a] civil penalty may be required to pay, in addition to the penalty amount and interest thereon, attorney fees and costs associated with the collection of the penalties."

The remedy provision accompanying 2 Okla. Stat. § 10-9.7 and Okla. Admin. Code § 35:17-5-5, 2 Okla. Stat. § 10-9.11 provides for actions "for injunctive relief to redress or restrain a violation by any person of the Oklahoma Registered Poultry Feeding Operations Act, or for any rule promulgated thereunder, or order issued pursuant thereto, or recovery of any administrative penalty assessed pursuant to the Oklahoma Registered Poultry Feeding Operations Act." See 2 Okla. Stat. § 10-9.11(C)(1). While this subsection is admittedly silent as to recovery of civil penalties, 2 Okla. Stat. § 10-9.11 clearly contemplates civil penalties being recoverable under the Oklahoma Registered Poultry Feeding Operations Act. 2 Okla. Stat. § 10-9.11(D) clearly states that "[e]xcept as otherwise provided by law, administrative and *civil penalties* shall be paid into the State Department of Agriculture Regulation Revolving Fund." (Emphasis added.) It is a "well-settled rule that all parts of a statute, if possible, are to be given effect." *American Textile Manufacturers Institute v. Donovan*, 452 U.S. 490, 512 (1981); see also *Oklahoma Tax Com. v. City Vending of Muskogee, Inc.*, 1992 Okla. LEXIS 158, *52-53 (Okla. June 14, 1992) ("Statutes must be construed as a consistent whole in harmony with logic, and every portion or part of a statute should be given effect if possible. We presume that the Legislature does not act in vain").⁷ In order for this part of 2 Okla. Stat. § 10-9.11 to have meaning, civil penalties must be awardable.

Thus, as with its state statutory claims in Count 7, the State also seeks civil penalties and

⁷ Additionally, 2 Okla. Stat. § 10-9.11 should be read *in parens materia* with 2 Okla. Stat. § 2-16(B), which, as noted above, provides for an action "to redress or restrain a violation of the Oklahoma Agricultural Code, any promulgated rule or any order, license, charter, registration, or permit issued pursuant to the Oklahoma Agricultural Code or to recover any administrative or civil penalty or other fine assessed pursuant to the Oklahoma Agricultural Code" The Oklahoma Registered Poultry Feeding Operations Act is, of course, part of the Agricultural Code, and therefore 2 Okla. Stat. § 2-16 can also be used as the vehicle to recover civil penalties for violations of Oklahoma Registered Poultry Feeding Operations Act.

injunctive relief under its claim for violations of 2 Okla. Stat. § 10-9.7 and Okla. Admin. Code § 35:17-5-5:

Pursuant to 2 Okla. Stat. § 10-9.11, the State of Oklahoma is entitled to an assessment of civil penalties against the Poultry Integrator Defendants for each violation together with attorneys fees and costs associated with the collection of such civil penalties, injunctive relief against the Poultry Integrator Defendants compelling compliance with the Animal Waste Management Plan criteria set forth in the Oklahoma Registered Poultry Feeding Operations Act, 2 Okla. Stat. § 10-9.7, and with the Oklahoma Administrative Code, § 35:17-5-5, and all such other relief as may be provided for under the law.

DKT #1215 (Second Amended Complaint, ¶ 135). For the same reasons that it is constitutionally entitled to a jury trial to determine Defendants' liability on its claim for civil penalties under *Simler* and *Tull* with regard to Count 7, the State is constitutionally entitled to a jury trial to determine Defendants' liability on its claim for civil penalties for violations of 2 Okla. Stat. § 10-9.7 and Okla. Admin. Code § 35:17-5-5.

III. Until the State's motion for reconsideration is resolved, it would be premature to strike the State's jury demand with respect to Count 2

As noted above, the State has moved for reconsideration of the Court's dismissal of Count 2, its claim for CERCLA natural resource damages. A claim for CERCLA natural resource damages is a legal claim, entitling the State to a jury trial. *See, e.g., Montana v. Atlantic Richfield Co.*, CV-83-317 (D. Mont. March 3, 1997 slip opinion) ("[T]he court concludes that an action to recover natural resource damages involves rights and remedies enforced in an action at law, and therefore invokes the Seventh Amendment right to a jury trial") (attached as Ex. 1); *In re Acushnet River & New Bedford Harbor*, 712 F. Supp. 994 (D. Mass. 1989); 5 Environmental Law Practice Guide, § 32B.06 ("While few opinions have addressed the issue, the better reasoned cases have found that a right to a trial by jury exists in natural resource damage cases");

4 Law of Hazardous Waste § 14.01 ("Most courts that have considered natural resource damage claims have held such claims to be legal in nature, thus entitling the parties to a trial by jury").

Because the State has moved for reconsideration of the Court's dismissal of its CERCLA natural resource damage claim, it would be premature to strike the State's jury demand with regard to this claim at this time.

III. Conclusion

WHEREFORE, in light of the foregoing, Defendants' Joint Motion to Strike Jury Demand should be denied.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
ATTORNEY GENERAL
Kelly H. Burch OBA #17067
ASSISTANT ATTORNEYS GENERAL
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

/s/Robert A. Nance
M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
David P. Page OBA #6852
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

Louis W. Bullock OBA #1305
Robert M. Blakemore OBA 18656
BULLOCK, BULLOCK & BLAKEMORE
110 West Seventh Street Suite 707
Tulsa OK 74119
(918) 584-2001

Frederick C. Baker
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
MOTLEY RICE, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice*)
MOTLEY RICE, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Jonathan D. Orent
(admitted *pro hac vice*)
Michael G. Rousseau
(admitted *pro hac vice*)
Fidelma L. Fitzpatrick
(admitted *pro hac vice*)
MOTLEY RICE, LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of August, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General
Kelly H. Burch, Assistant Attorney General

fc_docket@oag.state.ok.us
kelly_burch@oag.state.ok.us

M. David Riggs
Joseph P. Lennart
Richard T. Garren
Sharon K. Weaver
Robert A. Nance
D. Sharon Gentry
David P. Page

driggs@riggsabney.com
jlennart@riggsabney.com
rgarren@riggsabney.com
sweaver@riggsabney.com
rnance@riggsabney.com
sgentry@riggsabney.com
dpage@riggsabney.com

RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS

Louis Werner Bullock
Robert M. Blakemore
BULLOCK, BULLOCK & BLAKEMORE

lbullock@bullock-blakemore.com
bblakemore@bullock-blakemore.com

Frederick C. Baker
Lee M. Heath
Elizabeth C. Ward
Elizabeth Claire Xidis
William H. Narwold
Ingrid L. Moll
Jonathan D. Orent
Michael G. Rousseau
Fidelma L. Fitzpatrick
MOTLEY RICE, LLC

fbaker@motleyrice.com
lheath@motleyrice.com
lward@motleyrice.com
cxidis@motleyrice.com
bnarwold@motleyrice.com
imoll@motleyrice.com
jorent@motleyrice.com
mrousseau@motleyrice.com
ffitzpatrick@motleyrice.com

Counsel for State of Oklahoma

Robert P. Redemann
PERRINE, MCGIVERN, REDEMANN, REID, BARRY & TAYLOR, P.L.L.C.

rredemann@pmrlaw.net

David C. Senger

david@cgmlawok.com

Robert E Sanders
Edwin Stephen Williams
YOUNG WILLIAMS P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

Counsel for Cal-Maine Farms, Inc and Cal-Maine Foods, Inc.

John H. Tucker	jtucker@rhodesokla.com
Theresa Noble Hill	thill@rhodesokla.com
Colin Hampton Tucker	ctucker@rhodesokla.com
Kerry R. Lewis	klewis@rhodesokla.com
RHODES, HIERONYMUS, JONES, TUCKER & GABLE	

Terry Wayen West	terry@thewestlawfirm.com
THE WEST LAW FIRM	

Delmar R. Ehrich	dehrich@faegre.com
Bruce Jones	bjones@faegre.com
Krisann C. Kleibacker Lee	kklee@faegre.com
Todd P. Walker	twalker@faegre.com
Christopher H. Dolan	cdolan@faegre.com
Melissa C. Collins	mcollins@faegre.com
Colin C. Deihl	cdeihl@faegre.com
Randall E. Kahnke	rkahnke@faegre.com
FAEGRE & BENSON, LLP	

Dara D. Mann	dmann@mckennalong.com
MCKENNA, LONG & ALDRIDGE LLP	
<u>Counsel for Cargill, Inc. & Cargill Turkey Production, LLC</u>	

James Martin Graves	jgraves@bassettlawfirm.com
Gary V Weeks	gweeks@bassettlawfirm.com
Woody Bassett	wbassett@bassettlawfirm.com
K. C. Dupps Tucker	kctucker@bassettlawfirm.com
Earl Lee "Buddy" Chadick	bchadick@bassettlawfirm.com
Vincent O. Chadick	vchadick@bassettlawfirm.com
BASSETT LAW FIRM	

George W. Owens	gwo@owenslawfirmnpc.com
Randall E. Rose	rer@owenslawfirmnpc.com
OWENS LAW FIRM, P.C.	
<u>Counsel for George's Inc. & George's Farms, Inc.</u>	

A. Scott McDaniel	smcdaniel@mhla-law.com
Nicole Longwell	nlongwell@mhla-law.com
Philip Hixon	phixon@mhla-law.com
Craig A. Merkes	cmerkes@mhla-law.com
MCDANIEL, HIXON, LONGWELL & ACORD, PLLC	

Sherry P. Bartley	sbartley@mwsgw.com
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC	

Counsel for Peterson Farms, Inc.

John Elrod
Vicki Bronson
P. Joshua Wisley
Bruce W. Freeman
D. Richard Funk
CONNER & WINTERS, LLP

jelrod@cwlaw.com
vbronson@cwlaw.com
jwisley@cwlaw.com
bfreeman@cwlaw.com
rfunk@cwlaw.com

Counsel for Simmons Foods, Inc.

Stephen L. Jantzen
Paula M. Buchwald
Patrick M. Ryan
RYAN, WHALEY, COLDIRON & SHANDY, P.C.

sjantzen@ryanwhaley.com
pbuchwald@ryanwhaley.com
pryan@ryanwhaley.com

Mark D. Hopson
Jay Thomas Jorgensen
Timothy K. Webster
Thomas C. Green
Gordon D. Todd
SIDLEY, AUSTIN, BROWN & WOOD LLP

mhopson@sidley.com
jjorgensen@sidley.com
twebster@sidley.com
tcgreen@sidley.com
gtodd@sidley.com

Robert W. George
L. Bryan Burns
Timothy T. Jones
TYSON FOODS, INC

robert.george@tyson.com
bryan.burns@tyson.com
tim.jones@tyson.com

Michael R. Bond
Erin W. Thompson
Dustin R. Darst
KUTAK ROCK, LLP

michael.bond@kutakrock.com
erin.thompson@kutakrock.com
dustin.darst@kutakrock.com

Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., & Cobb-Vantress, Inc.

R. Thomas Lay
KERR, IRVINE, RHODES & ABLES
Frank M. Evans, III
Jennifer Stockton Griffin
David Gregory Brown
LATHROP & GAGE LC

rtl@kiralaw.com
fevans@lathropgage.com
jgriffin@lathropgage.com

Counsel for Willow Brook Foods, Inc.

Robin S Conrad

rconrad@uschamber.com

NATIONAL CHAMBER LITIGATION CENTER

Gary S Chilton gchilton@hcdattorneys.com
HOLLADAY, CHILTON AND DEGIUSTI, PLLC
Counsel for US Chamber of Commerce and American Tort Reform Association

D. Kenyon Williams, Jr. kwilliams@hallestill.com
Michael D. Graves mgraves@hallestill.com
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON
Counsel for Poultry Growers/Interested Parties/ Poultry Partners, Inc.

Richard Ford richard.ford@crowedunlevy.com
LeAnne Burnett leanne.burnett@crowedunlevy.com
CROWE & DUNLEVY
Counsel for Oklahoma Farm Bureau, Inc.

Kendra Akin Jones, Assistant Attorney General Kendra.Jones@arkansasag.gov
Charles L. Moulton, Sr Assistant Attorney General Charles.Moulton@arkansasag.gov
Counsel for State of Arkansas and Arkansas National Resources Commission

Mark Richard Mullins richard.mullins@mcafeetaft.com
MCAFEE & TAFT
Counsel for Texas Farm Bureau; Texas Cattle Feeders Association; Texas Pork Producers Association and Texas Association of Dairymen

Mia Vahlberg mvahlberg@gablelaw.com
GABLE GOTWALS

James T. Banks jtbanks@hhlaw.com
Adam J. Siegel ajsiegel@hhlaw.com
HOGAN & HARTSON, LLP
Counsel for National Chicken Council; U.S. Poultry and Egg Association & National Turkey Federation

John D. Russell jrussell@fellerssnider.com
FELLERS, SNIDER, BLANKENSHIP, BAILEY
& TIPPENS, PC

William A. Waddell, Jr. waddell@fec.net
David E. Choate dchoate@fec.net

FRIDAY, ELDREDGE & CLARK, LLP
Counsel for Arkansas Farm Bureau Federation

Barry Greg Reynolds
Jessica E. Rainey
TITUS, HILLIS, REYNOLDS, LOVE,
DICKMAN & MCCALMON

reynolds@titushillis.com
jraine@titushillis.com

Nikaa Baugh Jordan
William S. Cox, III
LIGHTFOOT, FRANKLIN & WHITE, LLC

njordan@lightfootlaw.com
wcox@lightfootlaw.com

Counsel for American Farm Bureau and National Cattlemen's Beef Association

Duane L. Berlin
LEV & BERLIN PC

dberlin@levberlin.com

Counsel for Council of American Survey Research Organizations & American Association for Public Opinion Research

Also on this 10th day of August, 2009 I mailed a copy of the above and foregoing pleading to:

Thomas C Green -- via email: tcgreen@sidley.com
Sidley, Austin, Brown & Wood LLP

Dustin McDaniel

Justin Allen

Office of the Attorney General (Little Rock)
323 Center St, Ste 200
Little Rock, AR 72201-2610

Steven B. Randall

58185 County Rd 658
Kansas, Ok 74347

Cary Silverman -- via email: csilverman@shb.com

Victor E Schwartz

Shook Hardy & Bacon LLP (Washington DC)

/s/Robert A. Nance